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STATE OF MICHIGAN  
DEPARTMENT OF HEALTH AND HUMAN SERVICES  
LANSING

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**IV-D MEMORANDUM 2019-012**

**TO:** All Friend of the Court (FOC) Staff  
All Prosecuting Attorney (PA) Staff  
All Office of Child Support (OCS) Staff

**FROM:** Erin P. Frisch, Director  
Office of Child Support

**DATE:** July 10, 2019

**SUBJECT:** IV-D Confidentiality, Family Violence, and the *Case Inventory Addendum*

**UPDATE(S):**

☐ Manual

☐ Form(s)

**ACTION DUE:** None

**POLICY EFFECTIVE DATE:** Upon receipt

**PURPOSE:**

This IV-D Memorandum states how IV-D confidentiality and family violence rules apply to the use of IV-D information when IV-D staff complete the *Case Inventory Addendum* (MC21) in IV-D domestic relations cases.

**DISCUSSION:**

The Michigan Supreme Court recently amended the Michigan Court Rules (MCRs) to prepare for the State Court Administrative Office's (SCAO's) statewide e-filing project.<sup>1</sup> The amendments were effective on September 1, 2018. One amendment requires a filing party in a domestic relations case to disclose any known pending or resolved family division case "that involves family members of the person(s) named in the case initiation document."<sup>2</sup> Filers must disclose those cases on the MC21. For each known case, the filer must disclose on the MC21 information that includes court case name, court case number, and whether an order exists that addresses child support, custody, and/or parenting time.

The MC21 allows a filing party to provide information that will help the court administer family division cases involving the family or individual family members. The SCAO

<sup>1</sup> Michigan Supreme Court Administrative Order No. 2002-37 (2018)

<sup>2</sup> MCR 3.206(A)(3)

Friend of the Court Bureau (FOCB) will soon publish a memorandum outlining what case information will allow the court to serve families effectively. The memorandum states the purposes for which the information is necessary and gives discretion to the filer to provide more or less information to accomplish those purposes.

A filer must serve the MC21 on the other party along with the summons and complaint. As a result, IV-D staff have raised concerns about confidentiality and disclosure of information to another party using the MC21. They have also asked OCS what IV-D information (including information from MiCSES<sup>3</sup>) may be included on the form to comply with state and federal confidentiality laws and the *Michigan IV-D Child Support Manual*.

## A. The MC21 and IV-D Confidentiality Policy

Court case information is public; however, once IV-D staff enter it into the IV-D case file and MiCSES, it is considered IV-D information and is subject to IV-D safeguarding and disclosure rules. IV-D agencies must “protect [IV-D information] to the greatest extent possible and use [it] only where necessary for authorized purposes.”<sup>4</sup> Among those authorized purposes is disclosure of IV-D information (except federal tax information) to courts for IV-D program purposes.<sup>5</sup> For example, IV-D staff may complete the MC21 using IV-D information and file it with a court in order to advance a court case on behalf of the IV-D program. However, **IV-D staff** must not disclose IV-D information merely because the information is otherwise public.

Federal and state law require OCS to have in effect safeguards that are designed to protect the privacy interests of the parties.<sup>6</sup> OCS policy therefore prohibits IV-D workers from disclosing case information to a party who is not involved in that case:

After verifying the CP’s/NCP’s<sup>7</sup> identity, IV-D staff must release only information directly related to the party’s own case. For example, *IV-D staff may not disclose to a CP information regarding any other cases in which the NCP is a member, or even the existence of those cases* (emphasis added).<sup>8</sup>

Disclosure to one party of the other party’s IV-D court cases in which the one party is not involved raises privacy concerns. For example, if IV-D staff file court cases on the CP’s behalf that may have led to a series of excluded fathers, disclosure of this information could result in harm and harassment to the CP. It may be necessary for

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<sup>3</sup> MiCSES is the Michigan Child Support Enforcement System.

<sup>4</sup> 73 Federal Register (FR) 56426

<sup>5</sup> 45 Code of Federal Regulations (CFR) 303.21(d); 73 FR 56435. Federal regulations also allow for disclosure by county court clerks of documents filed with the court that have not been sealed and are open to inspection by the public.

<sup>6</sup> 42 United States Code (USC) 454(26); Michigan Compiled Law (MCL) 400.233(m)

<sup>7</sup> The CP is the custodial party; the NCP is the non-custodial parent.

<sup>8</sup> Ref: [Section 1.10, “Confidentiality/Security,” of the Michigan IV-D Child Support Manual](#).

IV-D staff to include such cases on the MC21, though they would not otherwise disclose such personal IV-D information in the normal course of business.

OCS recommends IV-D staff work with their court to create best practices for the MC21 that balance parties' privacy with the court's need for information. Doing so will help protect parties' privacy, provide courts with the most relevant information, and reduce the time and effort it takes IV-D staff to prepare the MC21.

However, in cases where family violence is an issue, federal rules demand a stricter approach as discussed below.

## **B. The MC21 and IV-D Family Violence Restrictions**

Federal regulation and state law restrict disclosure of information in IV-D cases involving family violence. According to federal regulations, state IV-D agencies must prohibit "the release of information when the State has reasonable evidence of domestic violence or child abuse against a party or a child and that the disclosure of such information could be harmful to the party or the child."<sup>9</sup> State law also prohibits OCS from releasing information concerning an adult responsible for a child to another adult responsible for the child "if the office has reason to believe that release of the information may result in physical or emotional harm to that adult or the child."<sup>10</sup>

Each state has discretion to establish standards or criteria as to when the release of information about an adult or child may result in physical or emotional harm.<sup>11</sup> OCS believes that disclosure of all of a family violence survivor's court cases administered by the IV-D program creates a risk of harm or harassment to the survivor.

A person who makes a claim of violence with supporting documentation is marked in MiCSES with a Family Violence Indicator (FVI) and family violence (FV) code that cause MiCSES to suppress sensitive information on documents provided to the other party or found in open child support court records.<sup>12</sup>

### **1. IV-D Staff Disclosure of Court Case Information for IV-D Cases With Members Marked With an FVI**

When IV-D staff complete an MC21 for a IV-D case and one or more of the IV-D case's members is marked with an information-suppressing FVI and FV code or

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<sup>9</sup> 45 CFR 303.21(e)

<sup>10</sup> MCL 400.235(2)

<sup>11</sup> Ref: federal [Office of Child Support Enforcement \(OCSE\) Action Transmittal \(AT\)-98-27, \*PRWORA Requiring the Placement of a Family Violence Indicator\*](#).

<sup>12</sup> Ref: [Section 1.15, "Family Violence," of the \*Michigan IV-D Child Support Manual\*, Subsection 2, "Family Violence and the IV-D Program."](#)

the case has good cause granted,<sup>13</sup> (s)he may disclose from the IV-D record's court case information pertaining **only to**:

- a. Other IV-D cases that involve **both** of the parties;
- b. Agency placement cases brought on behalf of the child against either party to that IV-D case; and
- c. Third-party custodian cases brought on behalf of the child against either party to the IV-D case.

## 2. Developing Best Practices for Excusing Disclosure of a Party's Cases When (S)he Is Marked With an FVI

IV-D staff should work with their court to develop best practices for the MC21 that would excuse disclosure of a party's cases when (s)he is marked with an FVI. To help with these discussions, IV-D workers may reference one or all of the following:

- a. 45 CFR 303.21(e), which requires IV-D agencies to "prohibit the release of information when the State has reasonable evidence of domestic violence or child abuse against a party or a child and that the disclosure of such information could be harmful to the party or the child";
- b. MCL 400.233(m), which requires "safeguards against...disclosure of case record information that are designed to protect the privacy rights of the parties" as required by Title IV-D of the Social Security Act; and/or
- c. MCL 400.235(2), which prohibits OCS from releasing "information concerning an adult responsible for a child to another adult responsible for the child if the office has reason to believe that release of information may result in physical or emotional harm to that adult or to the child."

## C. MiCSES Functionality to Populate the MiCSES Version of the MC21 (the 1100)

The MiCSES version of the MC21, the 1100, was released in MiCSES in September 2018. Currently, MiCSES does not automatically populate the 1100 with case information. OCS recognizes that it can take IV-D staff significant time and effort to manually complete the 1100. A ticket to introduce MiCSES functionality to populate the 1100 is targeted for a future MiCSES release. Any functionality that will populate the 1100 must meet IV-D policy requirements and allow IV-D staff the ability to edit the form to tailor it to a court's unique requirements. However, OCS expects that IV-D staff will comply with the requirements of Section B(1) above when they complete the form.

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<sup>13</sup> Indicated by the good cause status "D – Good Cause Granted, Continue Action" on the *Case Member Details* (CASE) screen. For purposes of this policy, IV-D staff will assume that a good-cause finding indicates that a risk of harm to a child, parent, or caretaker exists. If the IV-D case is marked with the status "E – Good Cause Granted, End Action," IV-D staff would not take action to establish a court order and consequently, the MC21 would not be created. Ref: [Subsection 3.8.3, "Actions on Good Cause Granted, End Action," of Section 2.15, "Cooperation/Noncooperation/Good Cause," of the Michigan IV-D Child Support Manual.](#)

**NECESSARY ACTION:**

Retain this IV-D Memorandum until further notice.

**REVIEW PARTICIPANTS:**

Establishment Work Improvement Team  
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**SUPPORTING REFERENCES:**

Federal  
45 CFR 303.21(d) and (e)  
73 FR 56426  
73 FR 56435  
75 FR 81898  
42 USC 454(26)

OCSE AT-98-27

State  
MCL 400.233(m)  
MCL 400.235(2)  
MCR 3.206(A)(3)

**ATTACHMENT(S):**

None

**EPF/KZM**